

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**UNITED STATES OF AMERICAN for the use of
CONTRERAS CONSTRUCTION CORP., a
New Mexico corporation**

Plaintiffs,

vs.

Docket No. _____

**TRAVELERS CASUALTY & SURETY
COMPANY OF AMERICA, a Connecticut
Corporation, and FLINTCO, LLC, a
an Oklahoma limited liability company,**

Defendants.

**COMPLAINT ON PAYMENT BOND,
FOR DEBT DUE BY CONTRACT, AND
IN QUANTUM MERUIT**

Comes now Use Plaintiff, Contreras Construction Corporation, by counsel Bingham, Hurst & Apodaca, P.C. (Wayne E. Bingham), and for its Complaint states as follows.

COUNT I – MILLER ACT

1. Jurisdiction of the Court is conferred by Title 40 of the United States Code, §§3131 and 3133 as amended and pendent state claims
2. Venue of the Court is conferred by Title 40 of the United States Code, §3133(b), as amended, since the contract was performed within the District of New Mexico, in Dule, New Mexico, on the Jicarilla Apache Nation.

3. Use Plaintiff Contreras Construction Corp. (herein Contreras) is a licensed New Mexico construction contractor and corporation with office in Albuquerque, New Mexico.

4. Defendant Travelers Casualty & Surety Company of America (herein Travelers) is a Connecticut corporation doing business in New Mexico.

5. Defendant Flintco, LLC (herein Flintco) is an Oklahoma limited liability company with offices in Albuquerque, New Mexico and Inglewood, Colorado and other cities within the United States.

6. On or about 2017, Flintco entered into a government contract for construction of a community center in Dulce, New Mexico on the Jicarilla Apache Nation (herein Project).

7. In connection with the Project, Flintco, with Travelers, duly executed and delivered to the United States of America Payment Bond Number 051-SB-106681284 for the protection of all persons supplying labor and material to the Project, all in accordance with the provisions of 40 USC §3131 and 3133.

8. Flintco, as prime contractor, and Contreras, as subcontractor, entered into a subcontract on or about April 13, 2018 under which Contreras performed work in prosecution of the Project. A copy of this subcontract is attached hereto as Exhibit #1 and incorporated herein by reference.

9. The original subcontract amount was \$450,000.00. To this original amount change orders were added, for a total contract amount of \$528,260.00.

10. Contreras performed its scope of work pursuant to its subcontract with Flintco, and as of June 2020, Flintco had paid Contreras \$423,436.00 on the original total contract amount of \$528,260.00.

11. Contreras last performed work in connection with the Project in October of 2020.

12. Despite demand, Use Plaintiff Contreras has not been paid by Flintco the total contract amount, and there remains unpaid the amount of \$104,824.00 for labor and materials used in the prosecution of the Project, plus pre-judgment interest.

13. On June 30, 2020, Contreras gave timely Miller Act Notice to Flintco and Travelers that Contreras had not been paid by Flintco billed amounts due at the time of \$104,824.00 in connection with the Project. A copy of this notice to Flintco and Travelers with accompanying confirmations of receipt of the notice by both Flintco and Travelers is attached hereto as Exhibit #2 and incorporated herein by reference.

14. Since June 30, 2020, Flintco has not made payment to Contreras toward the contract balance due of \$104,824.00.

WHEREFORE, Use Plaintiff Contreras requests that the Court grant it judgment against Travelers on the payment bond in the amount of \$104,824.00, plus costs, interest, attorney fees, and such other and further relief as the Court may deem appropriate.

COUNT II - DEBT DUE BY CONTRACT

15. Use Plaintiff Contreras realleges paragraphs 1 through 14 as if set forth herein.

16. Use Plaintiff Contreras supplied labor and materials to Flintco pursuant to written contract (Exhibit #1 hereto).

17. There remains due and owing to Contreras by Flintco on the contract the amount of \$104,824.00, plus pre-judgment interest.

18. Flintco has refused to pay the amounts due Contreras.

19. The contract between Flintco and Contreras provides for payment of Contreras's attorney fees should Contreras prevail in a dispute with Flintco.

WHEREFORE, Use Plaintiff Contreras requests that the Court enter judgment in its favor against Defendant Flintco in the amount of \$104,824.00, plus costs, interest, attorney fees and such other relief as the Court may deem appropriate.

COUNT III - QUANTUM MERUIT

20. Use Plaintiff Contreras realleges paragraphs 1 through 19 as if set forth herein.

21. Use Plaintiff Contreras provided labor and materials to the Project at the request of Defendant Flintco for the benefit of Flintco.

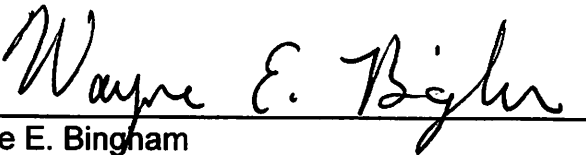
22. The labor and materials provided by Contreras to Flintco was reasonably worth \$528,260.00.

23. Use Plaintiff Contreras is entitled to receive \$104,824.00 from Defendants Flintco in *quantum meruit*.

WHEREFORE, Contreras requests that the Court enter judgment in its favor against Defendants Flintco in the amount of \$104,824.00, plus costs, interest, attorney fees, and such other and further relief as the Court may deem appropriate.

Respectfully submitted by:

BINGHAM, HURST & APODACA, P.C.

By 

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